IN THE HIGH COURT OF JUDICATURE AT BOMBY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3157 OF 2006

Mr. Tarachand M. Chaudhary
and Ors. .....Petitioners.

V/s

Kalyan Dombivili Municipal Corporation
Through its Commissioner
Shankarrao Chowk, Kalyan ....
Respondents.
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Mr. C.J. Sawant, Senior Counsel, i/b Mr. Nitin Dubhal & Mr. V.C. Ghosalkar for Petitioners.

Mr. Aspi Chinoy i/b Mr. A.S. Rao for Respondents.
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CORAM: S.J. VAZIFDAR, J.
DATE : 22nd January, 2007

P.C: Rule. Rule returnable and heard forthwith.

1. This Petition challenges the Order passed by the Additional District Judge at Kalyan dismissing the appeals filed by the Petitioners. The Petitioners filed appeals against the order of the IInd Joint Civil Judge, Junior Division, Kalyan dated 9th January, 2006 rejecting the Petitioners' application for injunction restraining the Respondents from interfering with their possession in respect of the suit premises.

2. The litigation leading to the impugned order arose out of several rounds of litigation which commenced with an order dated 4th October, 2002 issued under section 478 of the Bombay Provincial Municipal Corporation Act, calling upon the Petitioners to remove the said constructions. The Petitioners along with various other parties challenged the said order by filing various Writ Petitions. By an order and judgment dated 24th February, 2003 passed in Writ Petition No. 889 of 2003 and similar other Writ Petitions, a Division Bench of this Court allowed the Petitions and directed the Respondent - Corporation to decide the matter after hearing the Petitioners and the various other parties similarly situated.

3. The matter was thereafter heard and decided by the Respondent - Corporation after notice to the Petitioners. By an order dated 7th June, 2003 the Petitioners were directed to demolish the construction within seven days. The order was based on several grounds. The main question was whether the Petitioners had put up construction after obtaining prior permission for the same? The Petitioners contended that

they had obtained permission from the erstwhile Municipal Council which was later replaced by the present Corporation. The contention was rejected.

4. The order was challenged, inter alia, by the Petitioners and various others by filing Writ Petitions. Those Writ Petitions were allowed to be withdrawn with liberty to approach the Civil Court. It is in these circumstances that the Petitioners approached the Civil Court. It is in these proceedings that the aforesaid impugned orders were passed.

5. I find myself bound by an order dated 24th January 2006 passed by S.C. Dharmadhikari, J. in Writ Petition No.150 2006. The Counsel agreed that the facts and circumstances of that case are identical to the case before me except that, in those matters, a substantial part of the construction had already been demolished in 2004 when the suits in those cases were filed. In the case before me, demolition work has not commenced. The interlocutory applications of the Petitioners in those suits were also rejected. Writ Petition

No. 150 of 2006 was filed against those orders.

6. It is important to note, however, that in paragraph 3 the learned Judge recorded that in those suits an interim injunction was also prayed for to restrain the Corporation from carrying out further demolition and maintaining status quo at site. That application was also rejected by the Civil Court and by the order dated 24th January, 2006.

7. In other matters as well as in this matter, the main contention was that the Petitioners had obtained permission from the erstwhile Municipal Council. The Respondents' order impugned in the suits in all the matters recorded that the alleged permissions, xerox copies whereof were relied upon by the Petitioners, were not reliable and that the records of the Municipal Corporation pertaining to the erstwhile Municipal Council did not disclose any such permission. In respect of these findings which were upheld by the Civil Court, the learned Judge held that no interference is required in exercise of jurisdiction under Article 227 of the Constitution of India. The learned Judge,

accordingly, did not interfere with the said order. The learned Judge, however, to preserve the status-quo and subject matter of the suit directed the Respondent - Municipal Corporation to maintain status-quo to a limited extent.

8. I am bound by the order dated 24th January 2006 and accordingly pass the the following order:-

(i) Writ Petition is dismissed.

(ii) It is directed that the Respondents, after construction and completion of road widening work, shall not allot any portion thereof till the suits filed by the Petitioners herein are decided.

(iii) The suits filed by the Petitioners herein shall also be heard with the suits referred to in order dated 24th January 2006.

(iv) The learned Judge is requested to decide the suits on/or before 1st October, 2007.

(v) This order does not prevent the Power Company to use the Road and/or portion thereof for laying down its cables or installing any equipment for supplying electricity to areas under its operation.

(vi) In case, the Corporation wishes to allot some spaces which are vacant after the road is constructed for the purpose of parking, it is at liberty to make suitable application to the trial court for modification of the order and such application shall be decided after hearing the Petitioners as well as the Corporation.

(vii) All contentions of the parties are kept open.

(viii) All the parties shall maintain status-quo in respect of the suit structures till 2nd April 2007 to enable the Petitioners to challenge this order.

(ix) Writ Petition is accordingly disposed of.